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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAY 13 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	
Federal-State Joint Board on Universal Service	CC Docket No. 96-45
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	CC Docket No. 98-171
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	CC Docket No. 90-571
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	CC Docket No. 92-237 NSD File No. L-00-72
Number Resource Optimization	CC Docket No. 99-200
Telephone Number Portability	CC Docket No. 95-116
Truth-in-Billing Format	CC Docket No. 98-170

<u>Reply Comments of TracFone Wireless, Inc.</u>

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SUMMARY

TracFone Wireless, Inc., offers a unique prepaid wireless service that advances the goal of universal service by enabling underserved low-income and low-volume consumers to enjoy the benefits of wireless telephone service. TracFone has a substantial stake in the outcome of this rulemaking because changes in the current methodology for assessing payments for universal service support could have a profound impact on TracFone's business operations. The Commission's proposal and the record of this proceeding pose the following issues for TracFone.

First, nothing in the record of the proceeding alleviates TracFone's concern that its business operations, and hence the benefits its services provide to low-income and low-volume customers, would be significantly impaired by the universal service fund assessment methodology under consideration by the Commission. TracFone therefore strongly urges the Commission to consider TracFone's unique circumstances as part of the Commission's evaluation of changes to the current universal service funding mechanism.

The current record in this proceeding does not adequately address the problems which would be caused by a connection-based universal service assessment for prepaid wireless carriers like TracFone. Indeed, the primary proponent of a connection-based assessment methodology recognizes in its comments that an alternative approach would need to be adopted for prepaid carriers that do not charge their customers on a monthly subscription basis. TracFone is willing to work with the Commission and interested parties in this proceeding to ensure that the universal service fund assessment methodology, when applied to prepaid wireless carriers, does not violate the requirements of the Communications Act, interfere with the goals of competitive and technological neutrality, or harm low-income and low-volume consumers.

Second, if the Commission decides to significantly alter the current assessment methodology, there must be an adequate transition period of at least one year before the new system takes effect. This issue has not been thoroughly addressed in the proceeding to date, perhaps because it is difficult to evaluate what would constitute a reasonable transition approach before there is a decision on whether to significantly change the current methodology. For TracFone, however, this issue is vital. The proposed changes to the current methodology pose unique concerns for TracFone because it must recover increases in universal service contributions through its rates, rather than assessing contributions as a separate line item on a monthly bill to its customers. TracFone would be forced to implement any such rate increases through the sale of TracFone wireless airtime cards at over 60,000 retail outlets nationwide. The logistical and other problems that would be caused by such an implementation make it imperative that TracFone be given sufficient time to transition its operations to any new system.

Finally, TracFone agrees with other commenters opposing a collect and remit approach for universal service fund contributions. As a prepaid carrier, TracFone would necessarily collect all of its universal service fund contributions. Therefore, TracFone and its customers would effectively subsidize carriers with lower universal service collection rates.

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REPLY COMMENTS OF TRACFONE WIRELESS, INC.

TracFone Wireless, Inc. (TracFone), by counsel, hereby submits its reply comments in response to the Further Notice of Proposed Rulemaking released by the Commission on February 26, 2002, regarding the above-captioned proceeding.[1]

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[1] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Further Notice of Proposed Rulemaking and Report and Order, FCC 02-43, released Feb. 26, 2002 (*Further Notice*).

I. INTRODUCTION

On April 22, 2002, TracFone filed comments in the present proceeding.[2] In those comments, TracFone explains some of the unique aspects of its prepaid wireless service and why a connection-based assessment methodology to support universal service would be inequitable and discriminatory when applied to TracFone and other providers of prepaid wireless services. TracFone's comments also explain why application of a connection-based assessment methodology to TracFone would harm consumers and impede competition. In these reply comments, TracFone reiterates that such a methodology is inappropriate for TracFone and other providers of prepaid wireless services and demonstrates that the record does not support applying such a methodology to TracFone.

As described in TracFone's comments, TracFone's prepaid wireless service makes available the benefits of commercial mobile radio service (CMRS) to consumers who often find more conventional CMRS offerings either inadequate, unavailable, or otherwise inappropriate. TracFone's business model relies on TracFone subsidizing the initial price of a handset and recouping the investment by providing cost-effective services to customers.[3] Any increases in universal service subsidies that impact TracFone's rates and ability to offer cost-effective services will have a devastating effect on TracFone's ability to compete in the market.

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[2] Comments of TracFone Wireless, Inc., in CC Docket No. 96-45 *et al.*, filed Apr. 22, 2002 (TracFone Comments).

[3] Although other wireless carriers often appear to subsidize the price of handsets, these carriers generally require long-term service contracts with early termination penalties that guarantee recovery of the initial investment. TracFone does not take such an approach.

TracFone's service appeals to many low-income customers who cannot meet the credit requirements or security deposit demands of conventional CMRS carriers.[4] These customers are not eligible for any Lifeline exemption associated with their TracFone service because the Commission's rules do not permit TracFone to qualify as an eligible telecommunications carrier.[5] TracFone estimates that a $1.00 monthly assessment for each activated handset, as proposed in the *Further Notice*, would result in an increase of about 488 percent from TracFone's current average per-handset monthly assessment of $0.17.

TracFone's service also is attractive to low-volume customers. TracFone's comments explain that a large percentage of TracFone customers can be considered low-volume, with little or no calling activity during some monthly periods.[6] Although these customers generally have been ignored in the marketing efforts and pricing packages developed by many competitive carriers because they do not generate high profit margins per customer, TracFone has chosen to tailor its offerings to this underserved market segment by developing services and pricing that meet the needs of low-volume users. The regressive, connection-based contribution methodology proposed by the Commission would particularly harm these low-volume customers who would be forced to contribute at a rate that is disproportionately high compared to their usage.

Further, TracFone makes wireless handsets affordable to low-income and low-volume consumers by subsidizing the price of its handsets. These handsets are specially designed to allow them to keep track of a customer's usage and notify the customer of his or her remaining

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[4] TracFone Comments at 6.

[5] *Id.* at 10.

[6] *Id.* at 7.

minutes. TracFone never sends its customers any periodic or other bill. Therefore, unlike those wireless service providers that render invoices to customers for services provided, it cannot add a line item surcharge to recover its Universal Service Fund (USF) contributions. TracFone is unique in using a handset-based approach for tracking customer usage. Other prepaid wireless carriers perform this tracking function by using a database that is connected to the telecommunications network. The result of TracFone's handset-based approach to tracking usage is that TracFone is unable to deduct a per-month USF contribution from each customer's account. Therefore, any monthly connection-based charge would force TracFone to increase its per-minute rates (as the only means of imposing the charge) and place TracFone at a distinct competitive disadvantage when its service charges are compared to those of conventional wireless carriers and even other prepaid wireless carriers.[7]

To date, the record in this proceeding does not adequately address issues associated with USF contributions by prepaid wireless carriers and the unique concerns raised by TracFone. In addition, the record does not address the importance of a reasonable transition period if the Commission significantly changes the current USF assessment methodology. These reply comments urge the Commission to conclude that any USF contribution methodology must work for all contributors, not only large carriers and their customers, in order for the Commission to meet its statutory obligations. TracFone also argues that the Commission should adopt a fair and reasonable transition period to implement any major changes to the assessment methodology in order to alleviate implementation problems that would be faced by carriers such as TracFone.

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[7] *Id.* at 7-8, 16-17.

II. THE COMMENTERS DO NOT ADDRESS TRACFONE'S UNIQUE CONCERNS WITH A CONNECTION-BASED USF ASSESSMENT METHODOLOGY

Commenters in this proceeding generally address issues regarding the overall sufficiency of a connection-based methodology. Many commenters agree with TracFone that the connection-based proposal described in the *Further Notice* violates Section 254(d) of the Communications Act because a connection-based contribution charge would be neither equitable nor nondiscriminatory.[8] Also, many commenters agree with TracFone that the *Further Notice*'s proposed connection-based proposal would violate Section 254(d) because certain carriers providing interstate service would be exempt from contributing to the USF.[9]

In addition, TracFone agrees with many commenters who have asserted correctly that a connection-based funding methodology would exceed the Commission's jurisdiction under Section 2(b) of the Communications Act because it would cover intrastate services and the Commission does not have authority to impose USF funding requirements on intrastate

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[8] Allied Personal Communications Industry Association of California (Allied) Comments at 3-4; Arch Comments at 4-5; Beacon Comments at 3; Consumers Union *et al.* (Consumer Groups) Comments at 15-16; National Exchange Carrier Association, Inc. (NECA) Comments at 8; National Rural Telecom Association (NRTA) and Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) Comments at 8-12; National Telecommunications Cooperative Association (NTCA) Comments at 3-4; Rural Cellular Association (RCA) Comments at 3-5; Rural Independent Competitive Alliance (RICA) Comments at 3; SBC Comments at 19-20; Teletouch Comments at 5-6; Time Warner Telecom *et al.* Comments at 5-8; Verizon Wireless Comments at 5-7; Virgin Mobile Comments at 8; VoiceStream Wireless Comments at 12-14.

[9] BellSouth Comments at 5-6; California PUC and the People of California (California) Comments at 7; Consumer Groups Comments at 14-15; National Association of State Utility Consumer Advocates (NASUCA) Comments at 11-12; NECA Comments at 6-7; NRTA and OPASTCO Comments at 8, 10-11; RCA Comments at 4-5; RICA Comments at 2-3; SBC Comments at 18-19; Time Warner Telecom *et al.* Comments at 5; Verizon Comments at 21; Verizon Wireless Comments at 5; Virgin Mobile Comments at 7-8; VoiceStream Wireless Comments at 14-16.

services.[10] TracFone also agrees with those commenters who have described some of the harms that a connection-based contribution system would impose on low-volume and low-income users.[11]

The record, however, does not adequately address unique issues associated with TracFone's prepaid wireless service. In fact, the primary proponent of the connection-based USF assessment methodology – the Coalition for Sustainable Universal Service (Coalition) – concedes that certain types of connections may not be charged on a monthly subscription basis, and thus, a per-connection per month assessment would be difficult to apply.[12] Although Virgin Mobile USA, LLC (Virgin Mobile), a prepaid wireless service provider, indicates that it would have the capability of deducting a monthly connection-based assessment from each customer's account (assuming a customer has enough money in his or her account to cover the assessment),[13] TracFone does not have this capability because, as explained in the previous section, each customer's account is tracked in the customer's handset rather than a network database.

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[10] Allied Comments at 6-7; AT&T Wireless Comments at 3-5; NTCA Comments at 4; Nebraska Independent Companies Comments at 9; Time Warner Telecom *et al.* Comments at 9-11; United States Cellular Corporation (USCC) Comments at 6-9; Verizon Wireless Comments at 7-9; VoiceStream Wireless Comments at 17.

[11] California Comments at 5-7; Consumer Groups Comments at 10-12; NASUCA Comments at 14; NECA Comments at 8; NTCA Comments at 3-4; RICA Comments at 4-5; SBC Comments at 20; Virgin Mobile Comments at 15.

[12] Coalition Comments at 54.

[13] Virgin Mobile Comments at 6.

The Coalition suggests an alternative approach for prepaid wireless services, which would include a connection assessment when the service is first purchased and an additional USF assessment whenever prepaid service is renewed. The Coalition acknowledges that this approach may need a "rule of thumb" to determine the amount of the assessment imposed at the time of sale, but does not offer such a "rule of thumb" proposal in its comments.[14] Without a more concrete proposal, it is difficult for TracFone to assess whether this "rule of thumb" could be implemented by TracFone, whether it could in fact be made to operate in a manner that would satisfy the statutory requirements of being equitable and nondiscriminatory in its impact upon TracFone and its customers, and whether such an assessment approach could avoid any competitive harm to TracFone as well as other prepaid wireless service providers. TracFone is interested in exploring whether an appropriate assessment for the level of usage represented by each type of prepaid wireless airtime card could be developed.

The Coalition offers to work with the wireless industry to develop appropriate conventions to ensure that prepaid wireless services are not advantaged or disadvantaged with respect to wireless subscription services.[15] TracFone is happy to work with the Coalition, with any other party, and with the Commission in order to ensure that the Commission's USF assessment methodology meets the requirements of the Communications Act as well as the Commission's goal of achieving competitive and technological neutrality in its design of a universal service support mechanism. TracFone believes that any changes to the current revenue-based methodology must address issues raised in TracFone's comments and elaborated in these

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[14] Coalition Comments at 54.

[15] *Id.*

reply comments. At this juncture it is important to underscore that the Coalition – the principal architect of the connection-based assessment approach – acknowledges that its methodology poses problems for uniquely situated prepaid wireless carriers such as TracFone, and that adjustments to the methodology must be made to accommodate concerns regarding the inequitable and discriminatory effects of the proposed methodology.

The *Further Notice* and the Coalition's comments take the position that issues relating to a connection-based contribution methodology for low-income customers are adequately addressed by exempting users who qualify for Lifeline subsidies.[16] Several commenters raise additional concerns regarding connection-based contributions from low-income consumers.[17] The comments, however, do not address TracFone's concerns that a significant percentage of its customers are low-income, but these customers cannot qualify for the Lifeline exemption. TracFone's low-income customers, even if they qualified for Lifeline subsidies for their wireline service, would not be exempt from USF contributions associated with their TracFone service because TracFone cannot qualify as an eligible telecommunications carrier.[18] This is so even for those customers who do not have wireline service and who rely on TracFone as their only telecommunications provider. Therefore, neither the Commission's proposal in the *Further*

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[16] *Further Notice,* at para. 49; Coalition Comments at 70. The Coalition also argues that low-income wireline consumers will not face significant USF contribution increases because of the current contributions assessed by local exchange carriers. As explained below in the text, this argument does not apply to the wireless context where customers do not contribute to USF based on a subscriber line charge.

[17] California Comments at 6-7; NTCA Comments at 3-4; SBC Comments at 20-21; Virgin Mobile Comments at 15-16; Western Wireless Comments at 4-5.

[18] *See* TracFone Comments at 10.

Notice nor the commenters offer any solution to the undeniable problem that low-income wireless consumers, particularly those served by TracFone, would be unfairly disadvantaged by a connection-based USF assessment regime.

Although many commenters agree with TracFone that a connection-based assessment methodology would particularly harm low-volume consumers,[19] the comments fail to present any possible solutions to this problem under a connection-based assessment methodology. The Coalition argues that a connection-based assessment would have no significant impact on low-volume consumers because, under the current revenue-based assessment methodology, consumers with low-volume interstate calling patterns are still assessed fixed monthly charges by their local exchange carriers, based on their monthly subscriber line charge.[20] The Coalition's rationale, however, does not apply to low-volume wireless consumers, particularly prepaid wireless users who are not subject to a subscriber line charge and therefore do not currently make USF contributions based on that charge for access to the interstate network.

Two other prepaid wireless carriers, OnStar Corporation (OnStar) and Virgin Mobile, filed comments raising concerns with the proposal in the *Further Notice* that are similar to those raised by TracFone. For example, OnStar argues that the proposed connection-based system shifts the relative burden of funding to low-volume users and even non-users of interstate and

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[19] Concerned Paging Carriers (CPC) Comments at 11; California Comments at 5-6; Consumer Groups Comments at 10-12; NASUCA Comments at 14; NECA Comments at 8; NTCA Comments at 3-4; OnStar Comments at 4-5; RCA Comments at 4; RICA Comments at 4-5; Teletouch Comments at 8; Verizon Comments at 15 n.17; Virgin Mobile Comments at 15-16.

[20] Coalition Comments at 72-76.

international calling services.[21] Similarly, Virgin Mobile recognizes that the Commission's proposed connection-based policy will harm low-income and low-usage customers by raising the cost of wireless service.[22] These prepaid wireless carriers, however, do not share entirely TracFone's perspective on the impact of a connection-based assessment methodology, based on their unique services, and TracFone believes that the proposed methodology would have a more severe adverse impact on its operations than on those of Virgin Mobile or OnStar. As explained above, Virgin Mobile's technology allows for a monthly deduction of a connection-based assessment, as long as the customer's account has sufficient funds to cover the assessment. OnStar's unique service does not always permit customers to directly access the public switched network, raising questions about how such service would be treated under the connection-based proposal.

Several commenters specify alternative connection-based assessment methodologies that are designed to address some of the problems identified in the main proposal of the *Further Notice* and the Coalition. For example, Sprint proposes a connection-based methodology that would retain the current ratio of contribution between the wireline and the mobile wireless market segments and which would assign a per-connection charge to each segment.[23] SBC and BellSouth would require each retail relationship with a qualifying service connection provider to generate a contribution obligation.[24]

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[21] OnStar Comments at 4.

[22] Virgin Mobile Comments at 15-16.

[23] Sprint Comments at 11-14.

[24] SBC Comments at 9-10.

These alternative connection-based proposals do not adequately address the problems raised by TracFone's comments. Although the Sprint proposal recognizes that it would be inequitable and discriminatory for wireless carriers to face a large increase in their current per-connection contribution, it does not address the similar problem of dramatically increasing TracFone's assessment, based on the average per-handset interstate revenues of wireless carriers when TracFone's per-handset interstate revenues are much lower. Neither the Sprint proposal nor the proposal made by SBC and BellSouth addresses the inequitable and discriminatory effect that a connection-based approach would have on carriers such as TracFone that offer services that particularly appeal to low-volume and low-income consumers. Finally, neither the Coalition proposal nor the Sprint proposal addresses the inequitable and discriminatory impact of a connection-based charge that requires contributions from prepaid wireless carriers, but does not require prepaid *wireline* carriers, who offer their services through prepaid phone cards, to make any contribution at all. Similarly, SBC and BellSouth do not explain why their proposal would retain a revenue-based assessment for occasional use connections like prepaid wireline phone cards,[25] but presumably would apply a connection-based charge for prepaid wireless services.

III. IF THE COMMISSION SIGNIFICANTLY CHANGES THE USF FUNDING MECHANISM, IT MUST PROVIDE A REASONABLE PERIOD FOR TRANSITION TO THE NEW METHODOLOGY

The *Further Notice* recognizes that adoption of a connection-based funding mechanism for USF would be a significant change from the current funding mechanism and seeks comment on whether a connection-based assessment can be implemented immediately.[26] Few commenters

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[25] *Id.* at 11.

[26] *Further Notice*, at para. 83.

discuss the issue of a transition, and at least one commenter explains that it is difficult to propose a reasonable transition period until the Commission decides on the parameters of its USF assessment methodology.[27] If the Commission decides to significantly change the level or structure of USF contributions, it should provide companies like TracFone with a reasonable transition period. The Commission should take into account the practical realities of TracFone's business model, as they have been described in these reply comments and in TracFone's comments, and the Commission also should recognize that it is likely that all carriers will need a transition period to implement any significant changes in the current USF funding methodology.

As a carrier offering prepaid CMRS services, TracFone has determined that perhaps the only approach to collecting USF contributions from end users is to include these costs in its usage rates, even though doing so will expose TracFone to competitive disadvantages. TracFone's unique handset-based technology that tracks customer usage in the handset, rather than in a network-based database used by other prepaid wireless carriers, means that TracFone does not have the opportunity to make automatic deductions from a customer's account on a periodic basis. Because TracFone's prepaid wireless service is marketed through over 60,000 retail outlets nationwide, TracFone's prices cannot be changed easily or rapidly once prepaid wireless airtime cards are printed and shipped to stores for distribution to consumers. Therefore, TracFone would not have the ability to change its rates quickly to implement any significant changes to USF contribution requirements.

As explained in TracFone's comments, imposition of a $1.00 per month connection fee would amount to an increase of 488 percent per customer in TracFone's contribution rate. It

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[27] AOL Time Warner Comments at 10-11.

would take TracFone some time to determine the appropriate increased rates for each of its prepaid wireless cards and then develop related advertising and point of sale materials. Because TracFone markets its wireless airtime cards through retail outlets nationwide, TracFone also would face questions and concerns from vendors regarding rate increases that may adversely affect TracFone's nationwide distribution network.

Even if retailers do not object to rate increases, TracFone could not raise its rates immediately to recover increased USF contributions. It would take several months before prepaid wireless airtime cards with the new rates could be shipped to retail outlets and purchased by consumers. During that period and after, previously sold cards would have to continue to be honored despite the fact that the economic model upon which the pricing of those cards was based would have been significantly changed by the Commission. In addition, after TracFone ships new products with higher rates to various retail outlets, unsold wireless airtime cards at TracFone's lower rates would be obsolete inventory. These unsold cards could not be avoided because retail outlets would require adequate inventory at all times.

Without a reasonable transition period, TracFone would be denied the ability to recover USF contributions from end users until it could implement its own transition period for the current inventory of prepaid wireless airtime cards. Thus, TracFone would be forced to divert profits and other operating funds to cover the expenses incurred by it pursuant to the new assessment methodology. In order to address this in an equitable and nondiscriminatory manner, TracFone believes that it is necessary for the Commission to provide a transition period of at least one year from the adoption of any final rules.

IV. TRACFONE AGREES WITH COMMENTERS OPPOSING A COLLECT AND REMIT METHODOLOGY

TracFone agrees with commenters opposing the *Further Notice*'s "collect and remit" proposal allowing carriers to avoid USF contributions on uncollectibles.[28] For example, the joint comments of NRTA and OPASTCO argue that a collect and remit system would threaten the sufficiency and predictability of the USF, that the system would conflict with Section 254(d) of the Act, which places the burden of USF contributions on carriers and not end users, and that the system would result in carriers with low levels of uncollected contributions subsidizing carriers with higher levels of uncollectibles. TracFone and other prepaid carriers would never be able to avoid USF contributions due to uncollectibles because these carriers collect fees in advance of providing service. Indeed, the absence of any uncollectibles already is factored into the service rates set by TracFone. If USF contribution rates are increased because other carriers have a low collection rate, TracFone would be forced to subsidize all carriers that have a collection rate of less than 100 percent. Proposals to address concerns about low collection rates from individual carriers, such as Commission audits,[29] will only increase the costs associated with the universal service program.

V. CONCLUSION

For the reasons set forth above, TracFone opposes any radical shift to basing USF contributions on a connection fee. The record of this proceeding reflects acknowledgement of TracFone's concern that it would be competitively disadvantaged and its low-income and low-

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[28] NRTA and OPASTCO Comments at 22-23; Time Warner Telecom *et al.* Comments at 20; USCC Comments at 13-14.

[29] Coalition Comments at 60; Sprint Comments at 16.

volume customers would be harmed by the proposed connection-based assessment methodology. Before adopting any changes to the current USF assessment methodology, TracFone urges the Commission to consider the impact such a change would have on TracFone's prepaid wireless service. Connection-based assessments would impair a carrier offering that currently promotes the goals of universal service by providing service to low-income and low-volume customers.

Respectfully submitted,

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